

SCAO Model Policy: Requests for accommodations by persons with disabilities.

(a) [Policy] It shall be the intent of the _____ court to assure that qualified individuals with disabilities have equal and full access to the judicial system by providing a written accommodations policy. Nothing in this policy shall be construed to impose limitations or to invalidate the remedies, rights, and procedures accorded to any qualified individuals with disabilities under state or federal law.

(b) [Definitions] The following definitions shall apply under this policy:

(1) "Qualified individuals with disabilities" means persons covered by the Americans with Disabilities Act of 1990 (42 U.S.C. § 12101 et seq.) and other related state and federal law; and includes individuals who have a physical or mental impairment that substantially limits one or more of the major life activities; have a record of such an impairment; or are regarded as having such an impairment.

(2) "Applicant" means a qualified individual who is involved in a case such as lawyer, party, witness, juror, or any other individual (such as a parent, family member, guardian etc.) with a legitimate interest in attending any proceeding before any court of this state.

(3) "Accommodation(s)" may include, but are not limited to, making reasonable modifications in policies, practices, and procedures; furnishing, at no charge, to the qualified individuals with disabilities, auxiliary aids and services, which are not limited to equipment, devices, materials in alternative formats, and qualified interpreters or readers; and making each service, program, or activity, when viewed in its entirety, readily accessible to and usable by qualified individuals with disabilities requesting accommodations. Access may be provided by various methods including alteration of existing facilities, acquisition or construction of additional facilities, relocation of a service or program to an accessible facility, or provision of services at alternate sites. The court will consider the expressed choice of the individual requesting the accommodation to facilitate effective communication. The court may not place a surcharge on a particular individual or group of individuals to cover the cost of accommodation.

(4) The "policy" means this policy regarding requests for accommodations in state and local courts by qualified individuals with disabilities.

(5) "Confidentiality" applies to the identity of the applicant in all oral or written communications, including all files and documents submitted by an applicant as part of the application process.

(c) [Process] The following process for requesting accommodations is established:

(1) Applications requesting accommodations pursuant to this policy may be presented ex parte in writing, on a form approved by the State Court Administrative Office and provided by the court, or orally as the court may allow. Applications should be made at the office designated by the court where the proceeding will take place, or to the judicial officer who will preside over the proceeding, or other court staff designated to coordinate requests for accommodations.

(2) All applications for accommodations shall include a description of the accommodation sought along with a statement of the functional impairment that necessitates such accommodation. The court, in its discretion, may require the applicant to provide additional information about the qualifying impairment.

(3) Applications should be made as far in advance of the requested accommodations implementation date as possible.

(4) Upon request, the court shall maintain the application form in a separate, confidential file so as not to reveal the identify or other information contained in the application for accommodation.

(d) [Permitted communication] An applicant may make ex parte communications with the court; such communications shall deal only with the accommodation(s) necessary to provide access and shall not deal in any manner with the subject matter or merits of the proceedings before the court.

(e) [Grant of accommodation] A court shall grant an accommodations as follows:

(1) In determining whether to grant an accommodation and what accommodation to grant, the court shall consider, but is not limited by, the applicable provisions of the Americans with Disabilities Act of 1990, Section 504 of the Rehabilitation Act of 1973, the state Deaf Persons Interpreters Act PA 204 of 1982; Michigan Handicapper Civil Rights Act P.A. 220 of 1976; and the Elliott-Larsen Civil Rights Act P.A. 453 of 1976.

(2) The court shall inform the applicant in writing, or other accessible format needed by the applicant, of the reasons and basis upon which an order either grants or denies the accommodations request.

(f) [Denial of accommodation] An application may be denied **only if** the court finds that:

(1) The applicant has failed to satisfy the requirements of this policy; or

(2) The requested accommodation(s) would result in a fundamental alteration in the nature of the program, service or activity, or create an undue financial or administrative burden on the court.

(3) All courts however, **must make every effort** to enable individuals with disabilities to participate in and benefit from the services, programs and activities of the court.

(g) [Review procedure]

(1) An applicant or any participant in the proceeding in which an accommodation has been denied or granted may seek review of a determination made by nonjudicial court personnel within 5 days of the date of the notice of denial or grant by submitting a request for review to the presiding judge of the case.

(2) An applicant or any participant in the proceeding in which an accommodation has been denied or granted may seek review of a determination made by a presiding judge within 10 days of the date of the notice of denial or grant by submitting a request for review to the chief judge of the court.

(h) [Duration of accommodations] The accommodations by the court shall commence on the date indicated in the notice of accommodation and shall remain in effect for the period specified in the notice of accommodation. The court may grant accommodations for indefinite periods of time or for a particular matter or appearance. [Adopted effective _____, 1998.]